



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 14, 2020
MOAHR Docket No.: 19-012187
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on February 12, 2020, from Detroit, Michigan. The Department was represented by Amber Johnson, Regulation Agent of the Office of Inspector General (OIG).

Respondent did not appear at the hearing; and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving FAP benefits for 12 months?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on [REDACTED], 2019 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in his residence to the Department.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The OIG indicates that the time period they are considering the fraud period is March 1, 2018 through August 31, 2018 (fraud period).
7. During the alleged fraud period, Respondent was issued \$708 in FAP benefits from the State of Michigan.
8. During the alleged fraud period, Respondent was issued food assistance benefits from the State of Kentucky.
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500.00 or more, or
 - the total amount is less than \$500.00, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

BAM 720 (October 2017), pp. 12-13.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (October 2018), p. 6; BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273.16(e)(6). The federal regulations define an IPV as: (1) made a false or misleading statement, or

misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing for trafficking of SNAP benefits or Electronic Benefit Transfer (EBT) cards. 7 CFR 273.16(c). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she received Michigan-issued FAP benefits at the same time she was issued FAP benefits in Kentucky and provided false information about the receipt of food benefits from Kentucky. Under Department policy, a person **cannot** receive FAP benefits in more than one state for any month. BEM 222 (March 2016), p. 2; see also 7 CFR 273.3(a).

In support of its contention that Respondent committed an IPV, the Department presented a redetermination submitted by Respondent on September 29, 2017, in which she acknowledged that she received the Information Booklet advising of “Things You Must Do” (which explained reporting changed circumstances, including residency). Additionally, the Department presented a second redetermination submitted by Respondent on July 31, 2018. In the redetermination, Respondent did not answer the question asking if anyone in the group has ever received food assistance from another state.

The Department presented correspondence from the State of Kentucky which revealed that Respondent received food assistance benefits in Kentucky from March 2, 2018 through August 31, 2018. The Department further presented a benefit issuance summary relating to Respondent’s Michigan-issued FAP benefits which indicated that Respondent received Michigan-issued FAP benefits during the fraud period.

The evidence presented establishes that for the period of March 1, 2018 through August 31, 2018, Respondent received Michigan-issued FAP benefits, and during the same period, received food assistance benefits issued by the State of Kentucky. Respondent failed to indicate in her FAP redetermination submitted on July 31, 2018, that she was receiving food assistance from the State of Kentucky at that time. Therefore, the Department presented clear and convincing evidence that Respondent omitted pertinent information to the Department in order to obtain FAP benefits for which she was not entitled. Additionally, the Department presented clear and convincing evidence that Respondent committed an act that violates SNAP regulations, in that she received benefits in more than one state during the fraud period. Thus, Respondent committed an IPV in connection with her FAP benefit case.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits where the client

made fraudulent statement regarding identity or residency, and, for all other IPV cases involving FAP, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16; see also 7 CFR 273.16(b)(1) and (5). A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV through concurrent receipt food assistance benefits from two states at the same time. The Department only requested that Respondent be subject to a 12-month disqualification. As Respondent committed an IPV due to the concurrent receipt of benefits, she is subject to the standard one-year disqualification from receipt of FAP due to her violation of SNAP regulations for the concurrent receipt of benefits.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. At the hearing, the Department established that the State of Michigan issued a total of \$708 in FAP benefits to Respondent during the fraud period. The Department alleges that Respondent was eligible for \$0 in FAP benefits during this period.

As previously stated, the Department presented evidence from the State of Kentucky, which revealed that Respondent received food assistance benefits from Kentucky during the fraud period. The Department also presented the benefits issuance summary, which revealed that Respondent received Michigan FAP benefits during the same time period. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period she was issued food assistance benefits by the State of Kentucky. BEM 222, p. 3. Therefore, the Department has established it is entitled to recoup the \$708 in FAP benefits it issued to Respondent during the fraud period.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program FAP benefits in the amount of \$708.

The Department is ORDERED to initiate recoupment procedures for the amount of \$708 in accordance with Department policy.

